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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 WILLIE HUGH WALKER, JR.,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA, PUGET
13 SOUND NAVAL SHIPYARD, in its official
14 capacity as Plaintiff's Federal Employer, and
15 SECRETARY OF LABOR OFFICE OF
16 WORKERS' COMPENSATION PROGRAMS
in its official capacity as Administrator of a
Federal Law for Federal Employees'
employment related injuries sustained while in
the performance of a duty,

17 Defendants.

Case No. C05-5742RJB

ORDER

18 This matter comes before the Court on Defendants' Motion to Dismiss and Motion for
19 Injunctive Relief (Dkt. 24), Motion to Stay Discovery Pending Resolution of Motion to Dismiss
20 (Dkt. 26), Motion by the Plaintiff for an [sic] Judgment by Default Against the Defendant (Dkt.
21 32), and Plaintiff's Motion to File Exhibits (Dkt. 31). This Court has considered the pleadings
22 filed in support of and in opposition to these motions, and the remaining file herein.

23
24 I. FACTS

25 On November 14, 2005, Plaintiff filed a civil suit against the United States, the Puget
26 Sound Naval Shipyard ("PSNS"), and the Secretary of Labor for the Office of Workers'
27 Compensation Programs ("OWCP"). Dkt. 3. His claims arise from his employment as a
28 sandblaster at the PSNS from 1979 to 1984, and the Defendants' subsequent handling of his

1 various workers' compensation claims pursuant to the Federal Employees' Compensation Act
2 ("FECA"), 5 U.S.C. § 8128. *Id.* The details of his employment and history regarding his workers'
3 compensation claims are set forth in Defendants' motion to dismiss and need not be repeated here
4 except as follows. Dkt. 24, at 3-10.

5 Plaintiff's Complaint indicates that at some time during his employment he was placed on
6 light duty, but was ordered to return to his regular duties in February of 1983. Dkt. 3, at 4.
7 Plaintiff's Complaint alleges that as a result of having contact "with offending agents" he
8 "sustained an allergic sensitization injury and disease, which from February 1983 through July
9 1983 caused Plaintiff's eczema, asthma and urticaria injuries, along with allergy to molds, pollens
10 and latex injury, while in performance of his duties as a sandblaster for Defendant PSNS." *Id.* at 3.
11 Plaintiff claims, in his Complaint, that as a result of being ordered back to his regular duties,
12 Defendants violated his "equal protection and due process rights because the Plaintiff was denied
13 of his rights to receive reasonable accommodation for his said physical handicaps and work
14 restrictions, in clear violation of Section 501 of the Rehabilitation Act of 1973." *Id.* at 5.
15

16 Plaintiff further alleges that his equal protection and due process rights, and the FECA
17 were violated when Defendant OWCP denied his "employment related urticaria and allergy to
18 molds, pollens and latex claims" due to lack of medical evidence. *Id.* at 5, 8. Plaintiff alleges that
19 OWCP's decision, in January of 2004, to designate his "employment related asthma claim" a
20 "temporary aggravation" violated his equal protection and due process rights, and the FECA,
21 because there was medical evidence to the contrary. *Id.* at 9. Plaintiff also makes allegations
22 regarding the manner in which the Defendants were processing his FECA claims. For example,
23 Plaintiff alleges that Defendant PSNS's failure to timely a complete worker's compensation form in
24 June of 2004, violated his equal protection and due process rights. *Id.* at 10.
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26 This matter is one of several actions brought in U.S. District Court by Plaintiff against the
27 United States, and its agencies and employees regarding his employment at PSNS and the denial of
28 his worker's compensation benefits. In May of 1996, Plaintiff filed suit in U.S. District Court

1 under the Federal Tort Claims Act (“FTCA”) alleging OWCP erroneously denied his claim for
2 benefits, committed various torts including “negligence, medical malpractice, wantonness,
3 wilfulness, and constitutional violations,” (Case No. C96-842). Dkt. 24-2, at 25-37. The case was
4 dismissed for 1) lack of subject matter jurisdiction due to Plaintiff’s failure to file an administrative
5 tort claim, 2) lack of subject matter jurisdiction to review denial of worker’s compensation
6 benefits, and 3) a finding that his constitutional claims were not cognizable under FTCA. Dkt. 24-
7 3, at 2-3. On August 4, 1997, Plaintiff filed suit under the FTCA against the United States,
8 OWCP, PSNS and various individual employees of the United States, (No. C97-1279). *Id.* at 11-
9 23. Plaintiff’s Complaint alleged that his worker’s compensation claims had been denied because
10 he was black, and therefore deprived him of equal protection, and that he had been deprived of due
11 process in the denial of his claims. *Id.* The matter was dismissed upon the government’s motions
12 for summary judgment because Plaintiff failed to support his equal protection claim with sufficient
13 evidence and the evidence established that he had no valid due process claim. *Id.* at 27-28 and 30-
14 32. In June of 2003, Plaintiff again filed suit in the Western District of Washington, (No. C03-
15 1418RSL). Dkt. 24-4, at 18-25. In that matter, Plaintiff alleged that PSNS failed to supply him
16 with adequate protective clothing, PSNS negligently and wantonly ordered him back to work even
17 though he had demonstrated that repeated exposure was worsening his condition, and that sending
18 him back to his regular duties constituted medical malpractice. *Id.* He alleged PSNS and OWCP
19 conspired against him to deny his worker’s compensation benefits. *Id.* Plaintiff alleged violations
20 of his equal protection and due process rights. *Id.* Plaintiff alleged that OWCP’s denial of his
21 claims amounted to fraud. *Id.* The action was dismissed because: 1) Plaintiff’s claims under the
22 FTCA were not properly exhausted and they were barred by the exclusive remedy provision of the
23 FECA, 2) Plaintiff failed to allege sufficient facts to support his fraud or civil conspiracy claims, 3)
24 the United States did not waive sovereign immunity and so any monetary damages asserted for
25 alleged violations of his equal
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protection or due process rights would be barred, and 4) lack of subject matter jurisdiction to review the merits of his worker's compensation claim. Dkt. 24-5, at 23-27.

PENDING MOTIONS

Defendants move for dismissal of Plaintiff's complaint arguing that: 1) the majority of Plaintiff's Claims are barred by *Res Judicata*, 2) Plaintiff's claims regarding the processing of his FECA claims since April 28, 2004 are barred because he has not exhausted administrative remedies, 3) Plaintiff fails to state a claim upon which relief can be granted with respect to the alleged bad faith processing of his FECA claims since April 28, 2004 under the FTCA, 3) judicial review of the merits of Plaintiff's FECA claim is precluded by 5 U.S.C. § 8128(b), 4) Plaintiff's constitutional claims regarding the processing of his FECA claims since April 28, 2004 should be dismissed because Plaintiff has alleged no facts to support his claims. Dkt. 24. Defendants also move this Court to enjoin Plaintiff from filing future complaints based on facts related to injuries he allegedly suffered while employed at the PSNS and any related FECA claims based on those injuries. Dkt. 24, at 21-23.

16 Plaintiff moves for a default judgment against Defendants, arguing Defendants have not
17 filed an answer. Dkt. 31. Plaintiff also asks for leave to file exhibits to add to his complaint.

18 | Dkt. 32.

II. DISCUSSION

A. STANDARD

On a motion to dismiss, a court may dismiss a claim if it appears beyond doubt that the plaintiff can prove no set of facts to support the claim that would entitle the plaintiff to relief.

22 *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983), citing *Conley v. Gibson*, 355 U.S. 41,
23 45-56 (1957). Dismissal may be based on either the lack of a cognizable legal theory or the
24 absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police*
25 *Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the
26 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983).
27 However, a plaintiff must plead factual allegations with specificity; vague and conclusory

1 allegations of fact fail to state a claim for relief. *Colburn v. Upper Darby Township*, 838 F.2d 663,
 2 666 (3rd Cir. 1988).

3 **B. RES JUDICATA - CLAIMS RELATING TO EVENTS PRIOR TO
 4 DISMISSAL OF 2003 CASE**

5 Res judicata (claim preclusion) bars litigation in a subsequent action of any claims that were
 6 raised or could have been raised in the prior action. *Western Radio Servs. Co. v. Glickman*, 123
 7 F3d. 1189, 1192 (9th Cir. 1997) (*citing Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398
 8 (1981)). “In order for *res judicata* to apply there must be: 1) an identity of claims, 2) a final
 9 judgment on the merits, and 3) identity or privity between parties.” *Id.* (*citing Blonder-Tongue
 10 Lab. v. University of Ill. Found.*, 402 U.S. 313, 323-24 (1971)). “The central criterion in
 11 determining whether there is an identity of claims between the first and second adjudications is
 12 whether the two suits arise out of the same transactional nucleus of facts.” *Frank v. United
 13 Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000)(*internal citations omitted*).

14 Excluding the claims based upon events which occurred after the April 28, 2004 order
 15 dismissing case No. C03-1418RSL, Plaintiff’s claims are barred by *res judicata*. In the present
 16 action, Plaintiff has asserted his equal protection and due process rights were violated when 1)
 17 Defendant PSNS ordered him to return to his regular duties without accommodating his handicaps,
 18 and 2) Defendant OWCP denied various workman’s compensation claims. Dkt. 3. In Plaintiff’s
 19 2003 case, he brought claims against PSNS for negligently, wantonly and willfully ordering him
 20 back to his regular duties despite his limitations. Dkt. 24-4, at 20-21. Moreover, in his 2003
 21 action, Plaintiff alleged that PSNS and OWCP violated his “equal protection rights” and due
 22 process rights when they denied his workman’s compensation benefits. Dkt. 24-4, at 22-23.
 23 There is no dispute that the transactional nucleus of facts and parties are identical. All Plaintiff’s
 24 claims which were predicated on facts occurring before the April 28, 2004 dismissal could have
 25 been brought or were brought in the 2003 case, and so are barred by *res judicata*. This includes a
 26 claim under the Rehabilitation Act, to the extent Plaintiff is bringing one now. Moreover, Plaintiff
 27 does not dispute the finality of the prior judgment. Plaintiff merely argues that this Court cannot
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1 review rulings made in the “Seattle District Court.” Dkt. 30, at 2. It is precisely because this
2 Court cannot review rulings of its sister court that *res judicata* bars a majority of Plaintiff’s claims
3 (those based on facts prior to April 28, 2004).

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5 **C. CLAIMS RELATING TO EVENTS AFTER DISMISSAL OF 2003 CASE**

6 Plaintiff attacks the matter in which Defendants processed his FECA claims after the April
7 28, 2004 order and the fact that they continue to deny his claim. Dkt. 3. Plaintiff appears to be
8 claiming a violation of the FTCA, in part, in that he is alleging Defendants processed his FECA
9 claims in bad faith or in a negligent manner. Plaintiff’s claims should be dismissed. Under the
10 FTCA, “a tort claim against the United States ‘shall be forever barred’ unless it is presented within
11 two years after the claim accrues.” *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995)
12 (*citing* 28 U.S.C. § 2401(b)). Plaintiff failed to file an administrative claim and thus has not timely
13 exhausted his administrative remedies. Dkt. 24, at 13.

14 Moreover, federal court review of the merits of Plaintiff’s FECA claim is generally
15 precluded by 5 U.S.C. § 8128(b). *See Rodrigues v. Donovan*, 769 F.2d 1344 (9th Cir. 1985).
16 Under 5 U.S.C. § 8128(b), a decision by the Secretary of Labor (or his designee) in allowing or
17 denying payment is not subject to review by another official of the United States or by a Court by
18 mandamus or otherwise. The Ninth Circuit has determined that federal courts do retain
19 jurisdiction to review substantial constitutional claims. *See Rodrigues* at 1348.

20 To the extent that Plaintiff is attempting to urge the Court to overturn the Defendants’
21 denial of benefits since April 28, 2004, on non-constitutional grounds, his claims should be
22 dismissed because the Court has no jurisdiction upon which to act. (The Court notes that in his
23 Response, Plaintiff merely urges the Court review his medical records and make an independent
24 determination regarding the award of benefits.) Dkt. 30.

25 To the extent that Plaintiff is alleging his FECA claims should have been granted since
26 April 28, 2004, based on constitutional grounds, his claims should also be dismissed, but without
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1 prejudice. Plaintiff fails to allege any facts which support his equal protection or due process
2 claim. Plaintiff merely indicates that he is a member of a protected class (he is black) and states
3 that his equal protection and due process rights were violated. Dkt. 3. Plaintiff's vague allegations
4 of constitutional violations provide no basis for this Court to review the merits of his workers'
5 compensation claims. Plaintiff should be given leave to amend his complaint, if he so chooses,
6 upon the following narrowly drawn grounds: facts which have arisen after the April 28, 2004
7 order dismissing his 2003 case, which he alleges support substantial constitutional violations in the
8 denial of his FECA benefits. Plaintiff is cautioned that to the extent he may consider seeking
9 money damages for a constitutional violation, his claim would be barred as a matter of law as the
10 United States and its agencies have not waived their sovereign immunity from lawsuits seeking
11 money damages for constitutional damages. *See Daly-Murphy v. Winston*, 837 F.2d 348, 356 (9th
12 Cir. 1987).

13 **D. DEFENDANTS' MOTION FOR INJUNCTIVE RELIEF**

14 Defendants seek an order from this Court enjoining Plaintiff from filing future complaints
15 based on facts related to the injuries he allegedly suffered while employed at PSNS and any related
16 FECA claims based on those injuries. Dkt. 24-1, at 21. At this stage in this case, the Court can
17 not say that an injunction of this nature is appropriate. However, the Court has carefully reviewed
18 the record and strongly cautions Plaintiff to avoid filing anything which is frivolous or is intended
19 to harass others in violation of Fed. Civ. R. Pro. 11. Sanctions for violating Rule 11 include the
20 imposition of fines or dismissal of the case with prejudice. Plaintiff, should he choose to amend his
21 complaint, should limit his constitutional claims and factual allegations to events occurring after the
22 April 2004 dismissal of the 2003 case, and be mindful that monetary damages are barred.

23 **E. DEFENDANTS' MOTION TO STAY DISCOVERY**

24 Defendants move for a stay of discovery pending a decision on their motion to dismiss.
25 Dkt. 26-1. Pursuant to Fed. R. Civ. Pro. 26(c), for good cause shown, the Court may make an
26 order regarding discovery, which justice requires to protect a party from annoyance,
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1 embarrassment, oppression, or undue burden or expense including that the discovery not be had.

2 Defendants' motion to stay discovery should be granted. Plaintiff currently pleads no
3 viable claims. Any discovery requests he now makes would create an undue burden and expense
4 for the Defendants.

5 **F. PLAINTIFF'S MOTIONS FOR DEFAULT AND TO FILE EXHIBITS**

6 Fed. Civ. R. Pro. 12(b) provides that upon motion, a default judgment shall be entered
7 where a party, against whom a judgment for affirmative relief is sought, fails to plead or otherwise
8 defend. Plaintiff's Motion for Default (Dkt. 32) and Motion to File Exhibits (Dkt. 31) should be
9 stricken as moot because all his claims have been dismissed by this order.

10 **II. ORDER**

11 Therefore, it is now **ORDERED** that:

12 • Defendants' Motion to Dismiss (Dkt. 24) is **GRANTED, IN PART, AND DENIED IN**
13 **PART.** All Plaintiff's claims are dismissed with prejudice except Plaintiff's constitutional
14 claims regarding the denial of his FECA benefits based upon events occurring since April
15 28, 2004, which are dismissed without prejudice. Plaintiff, if he so chooses, may amend his
16 complaint within 14 days of the date of this order in keeping with the above findings.

17 Failure to file an amended complaint within the time allotted will result in dismissal of the
18 action with prejudice.

19 • Defendant's Motion for Injunctive Relief (Dkt. 24) is **DENIED**;

20 • Motion to Stay Discovery Pending Resolution of Motion to Dismiss (Dkt. 26) is
21 **GRANTED.**

22 • Plaintiff's Motion for an [sic] Judgment by Default Against the Defendant (Dkt. 32) is
23 **STRICKEN AS MOOT.**

24 • Plaintiff's Motion to File Exhibits (Dkt. 31) is **STRICKEN AS MOOT.**

1 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel
2 of record and to any party appearing pro se at said party's last known address.

DATED this 18th day of July, 2006.

Robert J. Bryan
Robert J. Bryan
United States District Judge